

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LESLIE A. SCHULZ,

Defendant.

8:13CR347

MEMORANDUM AND ORDER

This matter is before the court on defendant Leslie A. Schultz's motion for appointment of counsel and motion to proceed in forma pauperis ("IFP") on appeal. [Filing No. 97](#). The defendant has attached a financial affidavit and summons and order in aid of garnishment, [Filing No. 97-1](#).

Under the Federal Rules, "every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent that defendant at every stage of the proceedings from initial appearance before the federal magistrate or the court through appeal, unless that defendant waives such appointment." Fed. R. Crim. P. 44. To secure counsel as a matter of right, a defendant need only demonstrate a financial inability to pay for counsel. [18 U.S.C. § 3006A\(a\)\(1\)](#). The standard for appointment of counsel is financial inability to pay and not indigency. [United States v. Anderson](#), 567 F.2d 839, 840 (8th Cir. 1977). Financial inability is not as high a standard as indigency. [United States v. Harris](#), 707 F.2d 653, 660 (2d Cir. 1983); [United States v. Foster](#), 867 F.2d 838, 839 (5th Cir. 1989). The defendant bears the burden of proving inadequate financial means, and a decision adverse to a defendant will not be reversed unless it is clearly erroneous. [United States v. Sarsoun](#), 834 F.2d 1358, 1361 (7th Cir. 1987). The

required level of need must be established by a preponderance of the evidence. *Id.*
Such proof is evaluated on a case-by-case basis. *Id.*

The court has reviewed the defendant's affidavit and finds he has shown a financial inability to pay counsel. The court finds counsel should be appointed under the Criminal Justice Act Plan of the United States District Court for the District of Nebraska and the defendant should be allowed to proceed in forma pauperis on appeal. Accordingly

IT IS ORDERED:

1. Defendant Leslie A. Schultz's motion for appointment of counsel and motion to proceed in forma pauperis ("IFP") on appeal ([Filing No. 97](#)) is granted.
2. Brent W. Nicholls is granted leave to withdraw as retained counsel.
3. The Federal Public Defender is appointed to represent the defendant on appeal.
4. The Clerk of Court shall direct notice of this order to the Federal Public Defender for the District of Nebraska.

Dated this 6th day of March, 2015

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge